

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WITHDRAWAL-EASE.COM

Plaintiff,

v.

WITHDRAWAL.AID.COM AND

DANIEL TRIMPER

Defendants.

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CASE NO. 1:14-CV-878

JURY TRIAL REQUESTED

DEFENDANTS WITHDRAWAL.AID.COM AND DANIEL TRIMPER'S
NOTICE OF REMOVAL

1. Defendants, Withdrawalaid.com and Daniel Trimper, file this Notice of Removal based upon federal question jurisdiction pursuant to 28 U.S.C. §§1331, 1446(a) and (c) and based upon diversity jurisdiction pursuant to 28 U.S.C. § 1332. This motion is filed with the intent to file a request to dismiss this action for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2).
2. On August 26, 2014, Withdrawal-Ease.com filed suit in Cause No. D-1-GN-14-003205 in the 345th District Court of Travis County, Texas. (Ex. 1.) On August 28, 2014, without notice to the Defendants and without any opportunity for Defendants to be heard, Withdrawal-Ease.com obtained an ex parte Temporary Restraining Order and Order Setting Hearing for Temporary Injunction ("Ex Parte TRO"). (Ex. 2.)
3. On September 9, 2014, the Original Petition and the Ex Parte TRO were served with citation on the entity Withdrawalaid.com and on Daniel Trimper as the individual. Defendants file this Notice of Removal within the 30-day time period required by 28 U.S.C. §1446(b).

4. The Plaintiff's Original Petition, on its face, asserts the validity and the infringement of "federal copyrights and trademarks bearing serial numbers 85-602927 and 85-658441" and related causes of action. (Ex. 1, ¶ 7.)
5. Withdrawalaid.com and Daniel Trimper file this Notice of Removal and intend to pursue Motions to Dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure alleging, among other things, lack of personal jurisdiction over both Defendants. No waiver of any pre-answer motion in state or federal court is intended by filing this Notice of Removal.
6. Removal is proper based upon federal questions involving federally registered trademarks. 15 U.S.C. §§ 1114, 1121(a).
7. Removal is also proper based upon diversity jurisdiction pursuant to 28 U.S.C. 1332. According to the Original Petition, the Plaintiff is a "Texas company, with its principal place of business in Austin, Texas." (Ex. 1, ¶ 1.) Upon information and belief, Plaintiff is an assumed name of Withdrawal, LLC, an entity formed under the laws of the State of Texas with its principal place of business at 5304 Wishek Cove, Austin, Texas 78730. Defendant Withdrawalaid.com is an assumed name of Vitapro Labs LLC, an entity formed under the laws of the state of New Jersey with its principle place of business at 1000 Crown Court, Mahwah, New Jersey 07430. Defendant Daniel Trimper is an individual whose residence is 1000 Crown Court, Mahwah, New Jersey 07430. The Original Petition alleges "actual damages ... in the amount of at least \$500,000" and the affidavit of George Catlin attached to the Original Petition alleges actual damages of "hundreds of thousands of dollars in lost

sales.” (Ex. 1 ¶ 60; Affd. of Catlin ¶ 9 (attached to Orig. Pet.)). This more than meets the statutory requisite of damages asserted which are likely to exceed \$75,000. *See* 28 U.S.C. 1332.

8. There are no other defendants to consent to removal.
9. Defendants are not subject to personal jurisdiction in Texas. Defendants are residents of New Jersey and have no business locations outside of New Jersey. Defendants own no real or personal property in Texas. Defendants have never visited Texas for business or pleasure. Defendant Trimper is the sole member/manager of Defendant Withdrawalaid.com which has no employees other than Defendant Trimper. Defendants do not direct marketing efforts to Texas. Any contacts Defendants may have had with Texas have been merely fortuitous from views of a website directed to the worldwide viewers of the Internet. Defendants do not have sufficient minimum contacts with Texas to confer general or specific personal jurisdiction on Texas courts.
10. All pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. §1446(a). The attached documents include, by Exhibit number: (1) 2014 08 26 Plaintiff’s Original Petition; (2) 2014 08 28 Ex Parte TRO; (3) 2014 08 28 Cash Deposit in Lieu of Bond; (4) 2014 09 03 Motion to Extend TRO; (5) 2014 09 04 Order Extending TRO and Setting Hearing; (6) 2014 09 10 Affidavit of Service; and (7) Electronic Docket Sheet from the District Clerk of Travis County.

11. Defendant will promptly file a copy of this Notice of Removal with the clerk of the state court where the action has been pending.
12. Defendant requests a trial by jury.

Respectfully submitted,

/s/ Tracy J. Willi

Tracy J. Willi

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CERTIFICATE OF SERVICE

I hereby certify that I have served this document on all counsel of record electronically through the Court's CM/ECF system, if counsel is registered for such service, and by email and by facsimile, on September 17, 2014 as follows.

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